

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 97-4036

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Richard Allen Terrell,

Appellant,

v.

Kenneth S. Apfel, Commissioner of  
Social Security,

Appellee.

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Appeal from the United States  
District Court for the  
Southern District of Iowa.  
[UNPUBLISHED]

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Submitted: July 28, 1998

Filed: August 3, 1998

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Before WOLLMAN, HANSEN, and MURPHY, Circuit Judges.

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PER CURIAM.

Richard Allen Terrell appeals from an order of the district court<sup>1</sup> affirming the Commissioner's decision to stop Terrell's Social Security Income benefits and order repayment of benefits for which he was ineligible because of his wife's income. As Terrell has never disputed the amount of income the Social Security Administration (SSA) attributed to his wife, nor has he disputed the calculation of overpayment

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<sup>1</sup>The Honorable Charles R. Wolle, Chief Judge, United States District Court for the Southern District of Iowa.

contained in the SSA's notices, we conclude that substantial evidence supports the administrative law judge's determination that Terrell was not eligible for benefits based on his family income and that benefits were overpaid to him. See Connell v. Bowen, 888 F.2d 1250, 1251-52 (8th Cir. 1989) (standard of review). Although Terrell argues that the SSA improperly denied his request for a waiver as to the overpayment, we note that the issue of waiver is not properly before us, as the Appeals Council referred this issue back to the SSA, and Terrell alleged neither exhaustion of his administrative remedies on this issue nor a basis for waiver of the exhaustion requirement. See 42 U.S.C. §§ 405(g), 1383(c)(3); Rodabaugh v. Sullivan, 943 F.2d 855, 857 (8th Cir. 1991) (bases for waiver of exhaustion requirement). Accordingly, the judgment is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.